MONTESQUIEU'S *ESSAY ON NATURAL LAWS AND THE DISTINCTION BETWEEN JUST AND UNJUST*

We believe we may connect to the *Treatise on Duties* an *Essay*, hitherto unpublished, which Montesquieu intended—such, at least, is our hypothesis—for the grand work he was preparing upon the Duties of Man.

We have had the good fortune to recover the text thereof in the Archives of the City of Bordeaux (*a*). It bears the title: *Essay touching Natural Laws and the distinction between Just and Unjust.*

This *Essay* was pointed out for the first time by Gustave Bertrand, sent on a mission to Russia to draw up the Catalogue of French manuscripts in the Library of St. Petersburg (*b*). There one reads, at page 100, under number 31: "Montesquieu. *Essay touching natural Laws and the distinction between just and unjust.* Manuscript of 18 leaves."

The copy preserved in the Bordeaux Archives presents itself in the form of a cardboard-bound notebook of 19 pages [355 x 220 millimeters]. The copyist dated it at the end: "May 1877," and added the following note:

> "*Note.*—The manuscript ends with various extracts from the *Persian Letters*, among others Letters II, XII, XIII, & XIV."

This transcription was made and carefully collated with the original by Jules-Auguste-Hovyn de Tranchère, former deputy to the Constituent Assembly of 1848, who was arrested after the 2nd of December and passed into Russia, where he became an administrator of the Great Russian Railway Company. Hovyn de Tranchère transcribed for the Ministry of Foreign Affairs several of the manuscripts in the French collection of the Imperial Library. But he reserved for his native city the copies of manuscripts likely to interest its regional history. From 1877 to 1888, he thus sent ten transcriptions to the municipal Archives of Bordeaux, among which is found Montesquieu's *Essay* (*a*).

How did this unknown manuscript—copy or autograph—of Montesquieu enter the collections of the St. Petersburg Library? Hovyn de Tranchère says that the French

manuscripts in this library came from the collections of Counts Joseph and André Zaleski and that of Pierre Dubrowski, secretary to the Russian embassy in Paris in 1789, a discerning collector who obtained them after the sack of the Bastille and the Abbey of St. Germain-des-Prés. He later sold his collection, in 1805, to the Russian government.

But Gustave Bertrand, who marked with a *Z* or a *D* in his Catalogue the manuscripts of these two provenances, gives no indication as to the origin of the one which occupies us. On the other hand, the Catalogue of St. Germain-des-Prés (*b*), drawn up before the fire and annotated after the Revolution, is too succinct to inform us: no mention is made therein of our opuscle, though perhaps it is included in one of the notices for "Miscellaneous Memoirs" met with there. Only an examination of the Leningrad manuscript or, at least, a fuller and more precise description thereof, might perhaps enlighten us as to its origins. But it hath not been possible for us to obtain the slightest information concerning it.

There remains to us, then, only the possibility of drawing from the text itself, if not proofs, at least presumptions which have seemed to us strong enough to confirm the assertions, by no means negligible, of G. Bertrand and Hovyn de Tranchère regarding the attribution of this *Essay* to Montesquieu. We shall set forth, at the same time, the reasons which lead us to connect it with the *Treatise on Duties*.

The thesis developed by the author of the *Essay touching natural Laws and the distinction between Just and Unjust* may be summarized thus:

The existence of God being proved by the contemplation of an ordered universe subject to natural Laws, our reason, sole interpreter of the Creator, shows us the necessity of these laws for man as well, who could not subsist in disorder. We must therefore discover, by the help of reason, reflection, and the faculties of mind which the Creator hath given us to this end, the rules he would have us apply to secure our preservation and happiness, but of which he leaves us the choice in order to justify our merit. Shall we take for rules those moral truths generally admitted among all men, in all times and in all places? Yet they have not, like geometric truth, an absolute self-evidence; they are subject to exceptions and vary sometimes with the country. We require a fixed, fundamental principle—natural laws necessary to man's preservation: this shall be his own interest. This principle will guide his conduct:

1. toward himself, to be happy;
2. toward God, to conciliate Him;
3. toward his immediate neighbor, to obtain reciprocity;
4. toward all mankind, to procure for himself the advantages of Society.

Yet the findings resulting from this inquiry would be merely useful counsels of prudence, not obligations, were they not made into duties—natural laws rendering every human action just or unjust, and consequently liable to divine reward or punishment.

One sees, by this summary and still better by a reading of the text, that the subject is none other than that of the first three chapters of the *Treatise on Duties*: the definition of duties which flow from natural laws and are imposed by the very nature of things and beings. The plan is likewise the same: duties with respect to God, with respect to oneself, with respect to others (*a*). The same ideas are found therein under a nearly identical form.

The author of the *Analysis* informs us that in his *Treatise on Duties*, Montesquieu refuted the principles of Hobbes concerning Morality and praised the philosophy of Zeno and the Stoics. This is also the thesis maintained in the *Essay*, which tends to establish the existence of natural right, of justice, and of the sociability of men—notions all denied by Hobbes.

The works whereon Montesquieu chiefly drew, in writing the *Essay touching natural Laws*, are those of Grotius (*a*) and Pufendorf (*b*), the theorists of the "Law of Nature." He made numerous borrowings from them, and the gratitude he expressed to them for *The Spirit of Laws* would apply more justly to his *Essay*:

> "I render thanks to MM. Grotius and Pufendorf for having executed what a great part of this work required of me, with that loftiness of genius which I could not have attained." (*c*)

The slight extent given by Montesquieu to Chapter II of *The Spirit of Laws* left it to be believed that he had lost interest in the abstract question of "Natural Laws." This new *Essay* shows that such is by no means the case, and supplies Chapter II with the developments it lacked.

Being neither jurists nor moralists, we shall not venture further into these fields, which indeed have no place within the framework of this edition. We shall limit textual comparisons to a few examples which appeared to us most convincing to confirm the authenticity of this work. But, in order not to weigh down this introduction further with a lengthy parallel, we refer the reader to the text which follows, where we shall make in the notes all useful comparisons.

Let us add, in closing, that it is perhaps not entirely by chance that the original manuscript ends with *Persian Letters* II, XII, XIII, & XIV; for the last three at least (the episode of the virtuous Troglodytes) give an hyperbolical description of the blessings which result for a people from the observance of natural duties.

(a) Ms. 302.

(b) This Catalogue was printed at Paris in 1874.

(a) In the preface to his book: Les dessous de l'Histoire, Paris-Bordeaux, 1886, vol. I, p. 7, Hovyn de Tranchère gives the list of copies he made, as well for the Ministry as for the City of Bordeaux.

(b) Bibl. Nat., Nouv. acquisitions franç., ms. 5796.

(a) This division, entirely natural, hath nothing original in it; it is very ancient: it is found notably in Cicero and in Pufendorf.

(a) Hugo de Groot, Grotius (1583 to 1645), De jure belli ac pacis (1625). Our references to this work refer to the French translation by Jean Barbeyrac (Amsterdam, de Coup, 1724).

(b) Samuel Pufendorf (1632–1694), disciple of the former; De jure naturæ & gentium (1672). Our references refer to the French translation by Barbeyrac (London, Nourse, 1740).

(c) Montesquieu, Pensées, I, 191.